

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4491 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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VN SEXENA

Versus

RAM SINGH  
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Appearance:

PARTY-IN-PERSON for Petitioner

MR DARSHAN M PARIKH for Respondent No. 1,16 to 26

NOTICE NOT RECD BACK for Respondent No. 2

MR MJ THAKORE for Respondent No. 15  
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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 29/08/96

ORAL JUDGEMENT

Heard the petitioner who appears in person.  
Heard learned advocate Mr.M.J.Thakore appearing with Mr. D. M.Parikh for the respondents. The petitioner who at the relevant time was serving as Head constable in Railway Protection Force under Kota Division had been

served with a chargesheet for commission of acts amounting to grave misconduct of dereliction towards duty; insubordination; lack of discipline and of acting in a manner not befitting to a member of the disciplined force like Railway Protection Force. The petitioner being a Head Constable, a class III servant an Inspector of Railway Protection Force, was appointed as enquiry officer to inquire into the mis-conduct alleged to have been committed by the petitioner herein. After holding due inquiry, the Inquiry Officer submitted his report on 29th February, 1993. A copy of the said report was forwarded to the petitioner on 10th November, 1993 and he was called upon to submit his representation, if any, against the said inquiry report. The inquiry report was received by the petitioner on 11-11-1993. The petitioner, however, avoided to submit his defence statement and asked for time. The time asked for by the petitioner was granted by the disciplinary authority, however, he did not submit his representation. He remained absent from his duty continuously from 17th December 1993. The disciplinary authority having waited for the petitioner's representation against the inquiry report for a sufficient time, made the final order on 25th February, 1994. Considering the gravity of the mis-conduct committed by the petitioner and the requirement of maintenance of the discipline in the Railway Protection Force, petitioner was removed from service. The said order of removal from service was challenged before the Deputy Chief Security Commissioner. The Deputy Chief Security Commissioner considering the contentions raised by the petitioner herein and the records of the inquiry and past service records of the petitioner held that the inquiry had proceeded according to the rules and the petitioner was given facility to defend himself. He has further held that the petitioner had mis-behaved with his superior, abused him and used unparliamentary language which did not behove well of a member of an Armed Force. He has even further held that the petitioner stooped so low that he wrote dirty language in the application which he intended to handover to his superior, the Assistant Security Commissioner, on 2nd November, 1992 ( the date of the incident ). As a result of the aforesaid finding the Appellate authority has confirmed the order removing the petitioner from service.

2. It is these orders of the disciplinary authority dated 25th February 1994 and the Appellate Authority dated 25th November, 1994 which are subject matter of challenge in this petition.

3. The petitioner has appeared in person and has submitted that the inquiry has proceeded in a manner detrimental to his interest and he has not been given fair opportunity of defending himself. He has submitted that the complaint against him was made by the Assistant Security Commissioner who was superior to the Inquiry Officer who was merely an Inspector. According to him, the complainant-Assistant Security Commissioner being a witness, the Inspector was influenced by him and could not justify the petitioner's case. He has further submitted that all the witnesses were from the Kota Division and they were under influence of the complainant-Assistant Security Commissioner. The said witnesses, therefore, could not depose against Shri Chhabaria-the complainant-Assistant Security Commissioner. He has further submitted that the person appointed as his next friend did not protect his interest in proper manner which has resulted into miscarriage of justice. The petitioner has submitted that he had made a request that one R.Chillappan and one Gopalsinh be called for examination as witnesses, however, the Inquiry Officer did not call the said persons to depose in the inquiry. He has further submitted that the Inquiry Officer and the disciplinary authority have failed to correctly appreciate the evidence led in course of inquiry and the petitioner has unnecessarily been penalised.

4. Learned advocate Mr. Thakore appearing for the respondents has read over the inquiry report submitted by the Inquiry Officer and the impugned order made by the disciplinary authority. He has also referred to the order of the Appellate Authority made on 25th November, 1994.

5. Upon perusal of the records, it is found that the petitioner was given an opportunity to defend his case. He was also permitted to appoint a friend of his choice. However, the friend selected by him expressed his unwillingness to continue and the petitioner was asked to appoint any other person as his friend. The petitioner however, did not object to the withdrawal by his next friend and he had also assured the Inquiry Officer of co-operation. The petitioner did not appoint any other person to be his friend. The petitioner being a Head Constable, under the rules it was not necessary to appoint a Gazetted Officer to inquire into the acts of misconduct alleged to have been committed by the petitioner. The petitioner's demand for appointment of Gazetted Officer to hold inquiry against him has been found wholly unjustified. With a view to ascertaining a fair trial the petitioner was transferred to Baroda

Division at his request and an Inquiry Officer of Baroda Division was appointed. The petitioner was also permitted to submit his representation against the inquiry report which he did not avail of. Thus, in view of the above referred facts, I do not find any infirmity in the proceedings of the disciplinary action. Learned advocate Mr. Thakore appearing for the respondents has submitted that the petitioner had misbehaved with his superior officer and had used filthy language. He had thus acted in an indisciplined manner and in a manner not befitting to a member of Disciplined Force. He has also submitted that even during the pendency of this petition, petitioner had misbehaved with the learned advocates appearing for the respondents for which a notice for contempt was issued by this Court. He has therefore, submitted that the mis-conduct committed by the petitioner is grave and it did call for extreme penalty of removal from service.

6. In support of his contention Mr. Thakore has relied upon the judgment of the Hon'ble Supreme Court in the matter of State Bank of India and others vs. Samarendra Kishore Endow and Another reported in (1994) 2 SCC 537. He has submitted that imposition of appropriate punishment is within the discretion of the disciplinary authority. It is not open to the High Court to interfere with it. The power under Article 226 is one of judicial review. It is not an appeal from a decision, but a review of the manner in which the decision is made. He has further submitted that the power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the authority after according a fair treatment, reaches on a matter which it is authorised by law to decide for itself, a conclusion which is correct in the eyes of the court. He has further submitted that in the present case all the opportunities were offered to the petitioner to defend his case. The principles of natural justice and the requirements under the relevant rules have been scrupulously followed. The respondent having appreciated the evidence led before it, has recorded a finding of establishment of guilt against the petitioner. He has further submitted that in the circumstances this court should not endeavour to examine whether the evidence placed on the record of the disciplinary authority has been correctly appreciated or not. Since the commission of misconduct by the petitioner has been established against the petitioner, the respondents have rightly imposed upon the petitioner the penalty of removal from service. He has also relied upon the judgment of the Hon'ble Supreme Court in the case of B.C. Chaturvedi vs.

Union of India and others ( (1995) 6 SCC 749 ). He has invited my attention to Paragraphs 12 and 13 of the said judgment wherein the court has discussed the power of judicial review of the High Court under Article 226 of the Constitution of India. Mr. Thakore has further relied upon another judgment of the Hon'ble Supreme Court in the matter of State of U.P. and others vs. Ashok Kumar Singh and Another ( 1996 1 SCC 302). He has submitted that the Railway Protection Force being a disciplined force the highest standards of discipline are required to be maintained. Since the petitioner has been found to have acted in an indisciplined manner and having misbehaved with the superior officers no laxity is required to be shown to the petitioner. Looking to the gravity of the misconduct committed by the petitioner the impugned order of removal made against the petitioner does not call for any interference.

7. I do agree with the contentions raised by Mr.Thakore. The Railway Protection force is a disciplined force maintained for the protection of the life and property of the public. Laxity in this behalf would erode the discipline in service causing serious effect in maintenance of public peace. I do not find any infirmity in the procedure followed by the enquiry officer and the respondent authorities in holding disciplinary inquiry against the petitioner.

8. In the circumstances, I do not find any merit in the petition. Petition is, therefore, dismissed. Rule is discharged.

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